



Christopher Calfee, Senior Counsel
Governor's Office of Planning & Research
1400 Tenth Street
Sacramento, CA 95814

October 3, 2014

RE: 2014 CEQA Guidelines Update and Alternative Methods of Transportation Analysis

Dear Mr. Calfee:

Thank you for this opportunity to comment on the draft 2014 update to the CEQA Guidelines implementing SB 743. The Bay Area Council is always appreciative of the State's efforts to streamline CEQA for infill projects, however, we find that the proposed CEQA Guidelines do not in fact facilitate infill development as was intended for the reasons described below:

Rather than streamlining CEQA by eliminating aesthetics, parking and automobile delay as directed by SB 743, the draft Guidelines propose to expand CEQA by mandating evaluation and mitigation of "vehicle miles traveled" (VMT) as a new CEQA impact with proposed new mitigation measures. We fear that where people are trying to stop infill with CEQA litigation for whatever reason, this hands the litigants a new litigation weapon to stop projects--contravening the goals of SB375. This CEQA expansion is also wholly at odds with the Governor's many public statements about streamlining CEQA's complexity, cost and abuse.

We have several concerns with the adoption of Vehicle Miles Traveled as yet another standard that must be analyzed and mitigated under CEQA, not least of which is the fact that there are very few tools available to project proponents to accurately measure VMT, and those that exist are largely proprietary and thus costly to access.

Introducing VMT as an untested new methodology for traffic evaluation will increase CEQA's uncertainty, delay and cost for projects as it adds yet another analysis to required CEQA evaluations. Even though SB 743 expressly eliminated LOS as a CEQA impact for qualifying projects in qualifying infill areas, and in no way mandated that such projects be required to do more or different levels of transportation analysis or mitigation, this proposal actually adds a new CEQA compliance obligation on such projects since it provides only that such projects "generally" may not have an adverse VMT impact rather than the clear exemption that is authorized by SB 743. The proposal also misses a major opportunity to endorse SB 375 plans, and expand both the type of projects and infill locations that should not be subject to LOS thresholds and can rely on approved SB 375 plans as evidence of favorable VMT performance.

In lieu of introducing a new VMT metric, we strongly encourage OPR to adopt a Guideline that affirms the new statutory authority of a local lead agency to eliminate consideration of Levels of Service as a CEQA impact to encourage the full range of transit-oriented and pedestrian-friendly infill projects, and to reinforce that increasing traffic congestion no longer constitutes a lawful basis for making a significant impact conclusion under CEQA.



Any VMT proposal must also be structured to "do no harm" to the Community Plans, Specific Plans, and General Plan amendments that have already been adopted to encourage higher density infill development. As structured, all of these plans and accompanying EIRs (many painstakingly financed by cash-strapped localities in the Bay Area) will be subject to litigation re-opener risks to address this "new" VMT impact as required by this OPR proposal. The VMT proposal also increases CEQA costs and risks for the scores of projects now in the pipeline that are within these Specific Plan and Community Plan. These projects and plan help implement this higher density urban vision to reduce GHG, and the proposal undermines this vision by creating yet another cause of action for NIMBY and other litigation challengers.

Finally, the use of the VMT metric could potentially be obsolete before it ever gets off the ground given that we now have 100,000 electric and other low/zero emission vehicles on California roads. If VMT reduction is a proxy for GHG reduction, then it has to be pointed out that not all VMTs are created equal. A mile travelled in an electric car produces a quarter the carbon/GHG than a mile traveled in a comparable gasoline car. If in 10 years California is at 33% or 50% market share for electric cars and plug in hybrids, VMT will be a largely meaningless statistic, particularly if we continue to get more electricity from renewables in California which will further drive down GHG production by electric vehicles. OPR is putting in place guidelines for a 20th century world, not the world we live in, certainly not the world we are headed towards.

Should OPR remain committed to the use of VMT analysis for any projects, we respectfully request that this additional analytic requirement be delayed until OPR can partner with local and regional agencies to develop VMT models that OPR finds to be effective at a project level, and pilot these in willing localities that have eliminated LOS performance thresholds as a mandate in the Circulation Element of their General Plans. The results of such pilot studies should then inform any new Guideline amendment proposal, and the VMT model(s) must be open-sourced rather than proprietary for cost-effective implementation by other jurisdictions. Such a pilot project approach should occur to allow for a full and informed policy debate before any Guideline amendment is adopted that mandates yet another expansion of CEQA.

We fear that only additional litigation and delay of good infill projects will be the result of this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Wunderman', written over a horizontal line.

Jim Wunderman
President & CEO
Bay Area Council